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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,278	01/04/2002	Yoshiharu Omura	771,057	6826

7590

04/07/2003

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EXAMINER

SMALLEY, JAMES N

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 04/07/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/038,278

Applicant(s)

OMURA, YOSHIHARU

Examiner

James N Smalley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) ____ is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 7 is objected to because of the following informalities:

The word "form," found in claim 7, line 3, should be changed to "from."

Appropriate correction is required.

Specification

2. The amendment filed 03/17/03 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

The amendment introduces, in claim 7, a first distance, defined as the distance from the upper surface of the can to the outer rim; a second distance; and a third distance, with the second and third distances being less than the first distance. No enablement for these new limitations can be found in the Specification.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 7 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled

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in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The amendment introduces, in claim 7, a first distance, defined as the distance from the upper surface of the can to the outer rim; a second distance; and a third distance, with the second and third distances being less than the first distance. No enablement for these new limitations can be found in the Specification. In re Rasmussen, 650 F.2d 1212, 211 USPQ 323 (CCPA 1981).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi '678 in view of Perry '721.

Regarding claim 7, Kobayashi '678 discloses a beverage can comprising a can having a cover comprised of a stay-on tab (1), the stay-on tab being attached to an upper surface (4) of the can cover by a supporting means (6) protruding upward from the can cover, the can cover being comprised of, under one end of the stay-on tab, scores (9) for inducing rupture, the one end (2) of the stay-on tab being adapted to push downward a portion surrounded by the scores so as to form a content take-out hole when another end (3) of the stay-on tab is pulled upward, the supporting means being connected to a central portion of the stay-on tab, the central portion extending contiguously to the one end of the stay-on tab and separated from the another end of the stay-on

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tab so that the another end can be pulled upward from the upper surface of the can cover while the central portion remains juxtaposed in close contact with the upper surface of the can cover, said another end of said stay-on tab being a planar member, each of the one end and the another end of the stay-on tab are respectively inclined upward from the upper surface, the one end of the stay-on tab being separated from the upper surface of the can cover by a second distance, the another end of the stay-on tab being separated from the upper surface of the can cover by a third distance, the third distance becoming greater when the one end o the stay-on tab is pushed toward the upper surface of the can cover.

Kobayashi '678 does not disclose the can cover having wrinkles formed therein so as to prevent upward swelling of the can cover by an expansion of contents from the can.

Perry '721 discloses wrinkles (956) on the upper surface of the can so as to prevent upward swelling of the can cover by expansion of contents from the can.

Regarding claim 8, Kobayashi '678 does not disclose a polygon or elliptically-shaped rivet to prevent the stay-on tab from being turned in a horizontal direction or a can cover having wrinkles to prevent he can cover from being swelled upward by the expansion of the content of the can.

Perry '721 discloses an ovular-shaped rivet to prevent rotation of the stay-on tab (see col. 17, lines 31-32 where Perry '721 states the ovular-shaped rivet prevents rotation of the tab) and also discloses wrinkles (956) in the cover to prevent swelling of the cover.

It would have been obvious to one having ordinary skill in the art to modify the cover of Kobayashi '678 to include the ovular-shaped rivet of Perry '721 so as to prevent rotation of the tab.

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7. Claims 9 and 10 rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi '678 in view of Perry '721, as applied above to claim 7, and in further view of Cudzik '750.

Regarding claim 9, Kobayashi '678 does not show an auxiliary supporting means protruding upward from the can cover, the auxiliary support positioned beside the support, the auxiliary support connected to the central portion of the stay-on tab, the auxiliary support passing through the central portion and protruding upwardly from the central portion,

Cudzik '750 discloses it is known to provide an auxiliary supporting means (52) protruding upward from the can cover and being provided beside the supporting means and teaches, in col. 3, lines 46-54 that the rivets/auxiliary supporting means (52) define an imaginary pivot line about which a high strength solid lever-like tab can pivot.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the supporting means of Kobayashi '678 to further provide auxiliary supporting means (52) so as to obtain the benefit of a high strength solid lever-like tab when pivoted.

Regarding claim 10, Kobayashi '678 does not disclose the auxiliary support having an upper end spread so as to form a head.

Cudzik '750 shows the upper end of the auxiliary support (52) spread so as to form a head (70) and discloses the head holds the tab to the upper surface in a known matter, in col. 4, lines 43-46.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to spread the head of the auxiliary support means so as to form a head

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because one having ordinary skill would recognize the head prevents removal of the tab from the upper surface, and such a connection is disclosed as being well known in the art.

Response to Arguments

8. Applicant's arguments, filed 03/17/03, have been fully considered but they are not persuasive.

Examiner notes that although Perry '721 discloses the wrinkles to prevent the user against being cut by sharp edges of the opening, the applicant acknowledges in the amendment B, page 7, line 7, that the wrinkles, "are actually used to stiffen the can cover." Examiner notes stiffening of the can cover would achieve the goal of preventing upward swelling. Further, examiner notes any corrugated structure, despite its intended use, inherently provides the benefit of structural support.

Regarding the upwardly inclined ends, Examiner notes claim 7 merely says the ends are "upwardly inclined from the surface." The ends of Kobayashi '678 are also upwardly inclined from the surface.

Regarding the "see-saw effect," the examiner notes that any stay-on tab provides a see-saw effect, wherein a body pivots about a central axis. The see-saw effect, described in paragraph [0035] the specification of the current application, results in the distance between the upper surface of the can and the "another end" of the tab increasing, while the distance between the upper surface of the can and the "one end" of the tab decreases. This same effect is achieved in the Kobayshi patent, as can be seen by comparing the initial position, in figure 7a ("the tab before any force is applied") to the "in-use" position, shown in figure 8 ("section view for an early stage of lifting the cover of the can").

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 3,554,400.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies

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of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, email CustomerService3700@uspto.gov.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (703) 605-4670.

The examiner can normally be reached on M-Th 8-5:30, Alternate Fri 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.


Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line	1-800-786-9199
Internet PTO-Home Page	http://www.uspto.gov/

jns
April 3, 2003



Stephen K. Cronin
Primary Examiner